



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,942	03/21/2002	Bong Jin Chung	PAS205PCTUS	4648

7590 08/22/2006

Irving M Weiner
Weiner & Burt
635 N US 23
PO Box 186
Harrisville, MI 48740

EXAMINER

ROGERS, JAMES WILLIAM

ART UNIT	PAPER NUMBER
----------	--------------

1618

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/088,942		CHUNG ET AL.	
	Examiner		Art Unit	
	James W. Rogers, Ph.D.		1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5 is/are rejected.
- 7) ☒ Claim(s) 1 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/21/2006 has been entered.

The previous rejection of Claims 1 and 5 under 35 U.S.C. 103(a) as being unpatentable over Yamashita et al. (US 4,764,206) in view of Tadayuki et al. (US 5,668,086) in view of Mayer et al. (US 6,030,924) and further in view of Phillips (US 3,836,352) is **withdrawn**.

Claim Objections

Claims 1 and 5 are objected to because of the following informalities: "ethylene" "pyrophyllite" and "octylbenzenesulfonate" are misspelled; claim 5 has another misspelled word "octylnaphthalenesulfonate". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1618

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. (US 5,622,658).

Lloyd discloses water-dispersible granules comprised by weight %, 1-99% of a herbicide including paraquat, 0.1-25% of a surfactant including salts of sulphonated aromatic compounds (such as sodium naphthalene formaldehyde condensate) and phosphorylated ethylene oxide/propylene oxide block copolymers, 1-99% filler including ammonium sulfate and ammonium nitrate and can also comprise talc a known extender. See abstr, col 2 lin 32-66, col 3 lin 55-col 4 lin 33 and example 1. While Lloyd disclosed the use of the extender talc, he is silent on the use of pyrophyllite, but since they are both extenders and are both silicate hydroxides it is obvious that one could easily be substituted for the other since they are both extenders and will function or have nearly the same effect in a composition. The limitations for preparing the granules in claims 1 and 5 are met because the ingredients are wet mixed or kneaded, granulated using a pan-granulator, then dried using a fluidized bed dryer. See col 1 lin 62-67 and col 4 lin

Art Unit: 1618

43-col 6 lin 16. The temperature and time required to dry using a fluidized bed dryer was given no patentable weight by the examiner because it is considered to be ordinary practice by the skilled artisan to determine the time and temperature required to dry the granule to the desired moisture content. Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages."); In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969).

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. (US 5,622,658) in view of Phillips (US 3,836,352).

Lloyd is disclosed above. Lloyd while disclosing the use of an extender is silent on the use of the specific extender pyrophyllite.

Phillips discloses a herbicidal method utilizing substituted heterocyclic compounds and used pyrophyllite as an extender, See column 13 lines 19-33 and column 14 lines 40-45 and 48.

It would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made to combine the art described in the documents above

Art Unit: 1618

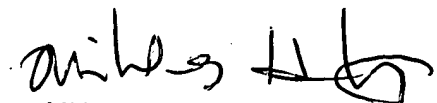
because Lloyd discloses all that is encompassed within applicants claimed invention except the use of the exact extender pyrophyllite while Phillips was used to show that herbicidal compositions which utilized pyrophyllite as an extender were known at the time of the invention. The motivation to combine the above documents would be a water dispersible granule containing paraquat, a surfactant, a disintegrant and pyrophyllite as the extender. Thus, the claimed invention, taken as a whole was *prima facie* obvious over the combined teachings of the prior art.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers, Ph.D. whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER